

James V. Marks (JM 6257)
Roseann Bassler Dal Pra (RBD 4919)
HOLLAND & KNIGHT LLP
195 Broadway
New York, New York 10007
212-513-3200

Attorneys for Defendant
Rockland County Sewer District #1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOROUGH OF UPPER SADDLE RIVER, ET AL.

Plaintiffs,

v.

VILLAGE OF AIRMONT, ROCKLAND,
COUNTY SEWER DISTRICT #1,

Defendants.

07 Civ. 0109 (____) (MDF)

**DEFENDANT ROCKLAND COUNTY SEWER DISTRICT #1'S
NOTICE OF MOTION TO DISMISS ALL CLAIMS ASSERTED
AGAINST IT BY PLAINTIFF BOROUGH OF UPPER SADDLE RIVER**

PLEASE TAKE NOTICE that at 10:00 a.m. on May 15, 2007, or as soon thereafter as counsel can be heard, defendant Rockland County Sewer District #1 (the "District") will move this Court before The Honorable Mark D. Fox, United States Magistrate Judge, at the United States Courthouse, Courtroom 421, 300 Quarropas Street, White Plains, NY 10601-4150, for an Order pursuant to Fed. R. Civ. P. 12(b)(1) dismissing all claims asserted against the District by plaintiff Borough of Upper Saddle River ("USR"). The grounds for the motion are that USR lacks standing under Article III of the United States Constitution to assert claims against the

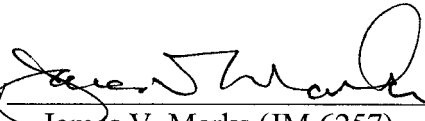
District under the federal Clean Water Act, and, as such, the Court should not exercise jurisdiction over USR's state common law claims.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Court's March 29, 2007 Order, any opposing affidavits and answering memoranda must be served by May 1, 2007.

Dated: New York, New York
April 17, 2007

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By 
James V. Marks (JM 6257)
Roseann Bassler Dal Pra (RBD 4919)
195 Broadway
New York, NY 10007
(212) 513-3200 Phone
(212) 385-9010 Fax

Lawrence R. Liebesman (Admitted Pro Hac Vice)
Steve Kelton (Admitted Pro Hac Vice)
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave. NW
Washington, DC 20006
(202) 955-3000 Phone
(202) 955-5564 Fax

Counsel for Defendant
Rockland County Sewer District #1

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07 Civ. 0109 (____) (MDF)

**REPORT AND
RECOMMENDATION**

This matter having come before the Court on the motion by defendant Rockland County Sewer District #1 (the "District") to dismiss all claims asserted against it by plaintiff Borough of Upper Saddle River ("USR") pursuant to Fed. R. Civ. P. 12(b)(1) (the "Motion"), and Court having considering the papers submitted in support of the Motion, and the Court having considered the papers submitted in opposition to the Motion, and the Court having heard argument on the Motion on May 15, 2007, and for good cause shown,

IT IS ON THIS ____ day of _____, 2007, that I make the following findings and recommendations:

(i) the Motion should be granted in its entirety;

(ii) USR's federal Clean Water Act claims against the District should be dismissed with prejudice on the ground that USR lacks standing under Article III of the United States Constitution to assert such claims; and

(iii) USR's state common law claims of public nuisance and trespass should be dismissed without prejudice on the ground that supplemental jurisdiction does not exist because USR does not have a viable federal claim.

Mark D. Fox, U.S.M.J.